90-1312

(4)

Supreme Court, U.S.
FILED
FEB 19 1991
OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

AMERICAN UNDERWRITERS GROUP, INC.,

Petitioner,

v.

HARRY E. EAKIN, as the Insurance Commissioner of the Department of Insurance of the State of Indiana,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE INDIANA COURT OF APPEALS SECOND DISTRICT

H. Earl Capehart, Jr.
Krieg DeVault Alexander & Capehart
2800 One Indiana Square
Indianapolis, IN 46204
(317) 636-4341
Counsel of Record

Howard Kahlenbeck, Jr.
Anthony W. Mommer
Krieg DeVault Alexander & Capehart
2800 One Indiana Square
Indianapolis, IN 46204
(317) 636-4341
Counsel for Petitioner

TABLE OF CONTENTS

Opinion of Indiana Court of Appeals.....1

Judgment of Trial Court.....12

Ruling of Court of Appeals on Petition for Rehearing.....15

Ruling of Supreme Court on Petition to Transfer.....16

Indiana Code 27-1.....17

- 27-1-2-1.....17
- 27-1-2-3(d).....17
- 27-1-2-3(e).....17
- 27-1-2-3(x).....17
- 27-1-6-1.....18
- 27-1-6-3.....19

Indiana Code 27-6-6.....22

- 27-6-6-1.....22
- 27-6-6-2.....22
- 27-6-6-3.....23
- 27-6-6-4.....26
- 27-6-6-5.....27
- 27-6-6-6.....28
- 27-6-6-7.....30
- 27-6-6-8.....32
- 27-6-6-9.....32
- 27-6-6-10.....34
- 27-6-6-11.....34
- 27-6-6-12.....35
- 27-6-6-13.....36
- 27-6-6-14.....37
- 27-6-6-15.....37

Indiana Code 27-9.....42

27-9-1-1.....42
27-9-1-2(d).....43
27-9-1-2(e).....43
27-9-1-2(m).....44
27-9-1-3.....45
27-9-2-1.....49
27-9-2-2.....51
27-9-3-1.....52
27-9-3-2.....52
27-9-3-3.....54
27-9-3-7.....58
27-9-3-9.....61
27-9-3-10.....69
27-9-3-11.....72
27-9-3-12.....75
27-9-3-14.....79
27-9-3-15.....83
27-9-3-16.....86
27-9-3-17.....90
27-9-3-18.....91
27-9-3-19.....93
27-9-3-20.....94
27-9-3-21.....94
27-9-3-22.....95
27-9-3-23.....97
27-9-3-24.....97
27-9-3-25.....98
27-9-3-26.....99
27-9-3-27.....100
27-9-3-34.....102
27-9-3-35.....105
27-9-3-36.....106
27-9-3-37.....111
27-9-3-38.....112
27-9-3-39.....114
27-9-3-40.....115
27-9-3-41.....120

Petition for Rehearing.....123

Petition to Transfer.....126

IN THE

COURT OF APPEALS OF INDIANA

SECOND DISTRICT

No. 49A02-8903-CV-105

HARRY E. EAKIN, as the Insurance Commissioner of the Department of Insurance of the State of Indiana,

Appellant (Petitioner Below),

v.

AMERICAN UNDERWRITERS GROUP, INC.,

Appellee (Respondent Below).

Appeal from the
Marion Circuit Court
The Honorable Judith S. Proffitt,
Special Judge
49C01-8804-MI-1016-A

SHIELDS, P.J.

Harry E. Eakin, as the Insurance Commissioner (Commissioner) of the Department of Insurance of the State of Indiana (Department) appeals the adverse judgment in its action against American

Underwriters Group, Inc. (AUG).

We reverse.

ISSUE

1. Whether AUG, the attorney-in-fact for American Interinsurance Exchange (AIE), an unincorporated association in rehabilitation, is subject to the provisions of IC 27-9 providing for delinquency proceedings by the Commissioner.

2. Whether the Commissioner met his burden of proving AUG is in such condition as to render the continuance of its business financially hazardous to its policyholders, creditors or the public.

FACTS

The facts are undisputed.

AIE is a reciprocal insurer organized under the interinsurance provisions of IC 27-6-6-1 et seq. AUG is an Indiana corporation organized under the Indiana

Business Corporation Law, IC 23-1.

AUG is the attorney-in-fact for AIE and was issued an "Inter-Insurance Certificate of Authority" by the Department. The certificate reads:

> Whereas, American Underwriters Group, Inc., Attorney-in-fact for certain individuals, partnerships and corporations desiring to exchange contracts of inter-insurance under the name and designation of American Interinsurance Exchange with the principal office of such exchange located at Indianapolis in the State of Indiana has complied with the laws of Indiana authorizing and regulating the exchange of such contracts:
>
> Now, Therefore, the said American Underwriters Group, Inc. as such Attorney-in-fact, and as far as it may be legally empowered by it's [sic] letter of appointment as such attorney, is hereby authorized and empowered to issue and exchange contracts of inter-insurance under the name and designation of American Interinsurance Exchange at Indianapolis in the state of Indiana insuring the members of such exchange in this State against loss . . . for the

> year ending perpetual unless suspended or revoked.

Record at 311. Accordingly, every insured/insurer executed a "Power of Attorney and Subscribers' Agreement." It reads:

> Subscriber authorizes Attorney-in-Fact, on Subscriber's behalf, to effect, modify and terminate contracts containing such terms as Attorney-in-Fact may deem suitable to provide any and all forms of insurance; to collect all monies due; to give, waive, or receive all notices and proof of losses; to settle all losses and claims under insurance contracts herein authorized; to cede and assume reinsurance; to accept and authorize others to accept service of process and appear in behalf of Subscriber in any suits, actions or proceedings, and to bring, prosecute, defend or otherwise settle suits, actions or proceedings; to perform every act not herein specified that the Subscriber could individually perform in relation to any contract herein authorized, appropriate to its proper and lawful execution and performance; . . .
>
> Subscriber authorizes the

> Attorney-in-Fact to pay out of the funds of Subscriber the cost of reinsurance, collection expense, investment expenses, losses, damages, judgments, court costs, legal expenses, loss adjustment expenses, license fees, taxes, inspection expenses, audits, examinations, rating bureaus, insurance trade and service organizations, bonds as required herein, brokerage and agency expenses and commissions.

Record at 313.

In addition, AUG's obligations and duties to the subscribers of AIE and to the Department are regulated by statute. See IC 27-6-6-1 et seq.

AUG deducted 15% of all monies received and due AIE as a fee for its services. As of December 31, 1987 AUG had overpaid itself fees in the amount of $91,238. In addition, by the time of the hearing on the rehabilitation petition AUG had failed to make payment of a $750,000 debenture due AIE on June 28,

1988. Also, at the hearing, the undisputed evidence was that AUG was insolvent by approximately $370,000.

On April 6, 1988 the Commissioner filed a petition for the rehabilitation of AIE. On that same day, AIE was placed into rehabilitation after consent was given by AUG's Board of Directors pursuant to IC 27-9-3-1 (1988). On May 4, 1988 the Commissioner filed a petition to rehabilitate AUG on the grounds reasonable cause existed to believe AUG was in such condition as to render the continuance of its business financially hazardous to the public, to AIE, and to AUG's creditors. The trial court denied the petition after a hearing, and the Commissioner appeals.

DECISION

I.

The first issue is one of statutory

construction: did the legislature give the Department authority to petition for the rehabilitation of AUG under IC 29-9 (sic) (article 9). Principles of the common law of agency are irrelevant.

AUG is an insurer doing business in Indiana because it has done and is licensed to do insurance business under a license or certificate of authority as an insurer issued by the Department, and it is, therefore, subject to article 9.

IC 27-9-1-1 (1988) provides article 9 applies to, among others, "(1) [a]ll insurers who are doing, or who have done, insurance business in Indiana, and against whom claims arising from that business may exist." In turn, IC 27-9-1-2(m) (1988) defines "insurer" as "any person who: (1) has done, purports to do, is doing, or is licensed to do insurance business; and (2) is subject to

the authority of any insurance commissioner as to liquidation, rehabilitation, reorganization, supervision, or conservation." The remaining relevant term, "doing business," includes:

> (1) The issuance or delivery of contracts of insurance to persons resident in Indiana.
> (2) The solicitation of applications for contracts or other negotiations preliminary to the execution of contracts.
> (3) The collection of premiums, membership fees, assessments, or other consideration for contracts.
> (4) The transaction of matters subsequent to execution of contracts and arising out of them.
> (5) Operating under a license or certificate of authority, as an insurer, issued by the insurance department.

IC 27-9-1-2(e) (1988).

AUG has a certificate of authority issued by the Department as provided by IC 27-6-6-9 (1988):

> Upon compliance with the requirements of this chapter, the insurance department shall

> issue a certificate of authority or a license to the attorney authorizing him to make such contracts of insurance and shall contain the name of the attorney, the location of the principal office, and the name or the designation under which such contracts of insurance are issued. . . .

(Emphasis added.) The certificate of authority is thus issued to AUG as the attorney and authorizes AUG "to make contracts of insurance," albeit in the name of AIE. Hence, AUG is an insurer because it is licensed to do insurance business by the Department and has operated under that license. In addition, claims arising from AUG's "doing business" exist. The undisputed evidence is AIE is owed over $91,000 for overpayments AUG made to itself for service fees. Further, AUG has failed to make payment to AIE of a matured debenture in the face amount of

$750,000. Thus, AUG is subject to the authority of the Commissioner as to rehabilitation under IC 29-9 (sic).

In conclusion, as a matter of law, AUG is an insurer who has done insurance business in Indiana and against whom claims arising from that business exist. Therefore, IC 27-9 applies to AUG and the trial court erred, as a matter of law, in concluding otherwise.

II.

The second issue is whether the Commissioner met his burden of proving AUG "is in a condition that the further transaction of business would be hazardous, financially, to its policy-holders, creditors or the public," the statutory predicate to the Commissioner's petition for AUG's rehabilitation.

The undisputed evidence presented at the hearing is that AUG was insolvent by

approximately $370,000 and that it owed AIE over $841,000. The only reasonable inference from this evidence is that the continued transaction of business by AUG is financially hazardous to its creditor, AIE. Thus, as a matter of law, the Commissioner met his burden of providing the statutory prerequisite for his petition to rehabilitate AUG.

Judgment reversed and cause remanded to the trial court for further proceedings consistent with this opinion.

BUCHANAN, J., CONCURS.

RATLIFF, C.J., CONCURS.

IN THE MARION CIRCUIT COURT OF INDIANA

No. 49C01-8804-MI-1016

HARRY E. EAKIN, as the Insurance Commissioner of the Department of Insurance of the State of Indiana,

Petitioner,

v.

AMERICAN INTERINSURANCE EXCHANGE,

Respondent.

JUDGMENT

The Liquidator has moved the Court pursuant to Trial Rule 54(B) to enter final judgment on the matters determined by the Court's August 31, 1988, Order, which denied the Verified Petition for Order of Rehabilitation of American Underwriters Group, Inc. The Court determines that there is no just reason for delay, and directs the entry of final judgment in accordance with said Order.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Court's August 31, 1988, Order is entered as a final judgment on this date for American Underwriters Group, Inc., and against the Liquidator on the Verified Petition for Order of Rehabilitation of American Underwriters Group, Inc.

2. The Liquidator is directed to promptly cause a copy of this Judgment to be mailed to Howard Kahlenbeck, Jr., as attorney for American Underwriters Group, Inc.

Dated: 9-6-88

/s/ Judith S. Proffitt
JUDITH S. PROFFITT,
Special Judge Marion Circuit Court

IN THE MARION CIRCUIT COURT OF INDIANA

No. 49C01-8804-MI-1016

HARRY E. EAKIN, as the Insurance Commissioner of the Department of Insurance of the State of Indiana

v.

AMERICAN INTERINSURANCE EXCHANGE

ORDER

The Court having taken this matter under advisement and having reviewed the verified petition for order of rehabilitation of American Underwriters Group, Inc. and the evidence introduced at the hearing held on August 9, 1988, the stipulations entered and the briefs filed by all counsel and being duly advised now denies the State's petition for rehabilitation of American Underwriters Group, Inc.

Date: 8-31-88

/s/ Judith S. Proffitt
JUDITH S. PROFFITT,
Special Judge Marion Circuit Court

A-15

STATE OF INDIANA

CLERK OF THE SUPREME COURT,
COURT OF APPEALS AND TAX COURT

DANIEL ROCK HEISER, CLERK
217 STATE HOUSE
INDIANAPOLIS, 46204

Cause Number
49A02-8903-CV-00105

LOWER CAUSE
49C018804ME1016A

EAKIN, HARRY E.,

-V-

AMERICAN UNDERWRITERS GROUP, INC.

You are hereby notified that the COURT OF APPEALS has on this day 6/05/90 APPELLEE'S PETITION FOR REHEARING DENIED WITHOUT OPINION. WESLEY W. RATLIFF, JR., CHIEF JUDGE. ALL JUDGES CONCUR.

Witness my name and the seal of said Court, this 5th day of June, 1990.

/s/ Dan Heiser
Clerk Supreme Court,
Court of Appeals and Tax Court

STATE OF INDIANA

CLERK OF THE SUPREME COURT,
COURT OF APPEALS AND TAX COURT

DANIEL ROCK HEISER, CLERK
217 STATE HOUSE
INDIANAPOLIS, 46204

Cause Number
49A02-8903-CV-00105

LOWER CAUSE
49C018804ME1016A

EAKIN, HARRY E.,

-V-

AMERICAN UNDERWRITERS GROUP, INC.

You are hereby notified that the SUPREME COURT has on this day 11/27/90 APPELLEE'S PETITION TO TRANSFER IS HEREBY DENIED. RANDALL T. SHEPARD, CHIEF JUSTICE. ALL JUSTICES CONCUR.

Witness my name and the seal of said Court, this 27th day of November, 1990.

/s/ Dan Heiser
Clerk Supreme Court,
Court of Appeals and Tax Court

IC 27-1

27-1-2-1. Short title. IC 27-1-2 through IC 27-1-20 shall be known and may be cited as the Indiana Insurance Law. [Acts 1935, ch. 162, § 1, p. 588; P.L. 252-1985, § 3.]

27-1-2-3. Definitions. -- As used in this article, and unless a different meaning appears from the context: . . .

(d) The term "company" or "corporation" means an insurance company and includes all persons, partnerships, corporations, associations, orders or societies engaged in or proposing to engage in making any kind of insurance authorized by the laws of this state.

(e) The term "domestic company" or "domestic corporation" means an insurance company organized under the insurance laws of this state. . . .

(x) The term "insurer" means a

company, firm, partnership, association, order, society or system making any kind or kinds of insurance and shall include associations operating as Lloyds, reciprocal or inter-insurers, or individual underwriters. . . .

[Acts 1935, ch. 162, § 3, p. 588, 1963, ch. 203, § 1; 1977, P.L. 280, § 1.]

27-1-6-1. Incorporators. -- Any number of natural persons, not less than seven (7), all of whom are eighteen (18) years of age or older, at least a majority of whom are residents of the state of Indiana and citizens of the United States, may form a corporation under the provisions of this chapter for the purpose of making any kind or kinds of insurance described in any one class set out in IC 27-1-5-1, other than reciprocal, farm mutual, fraternal, and assessment insurance, by complying with

the provisions of this chapter. [Acts 1935, ch. 162, § 61, p. 588; 1973, P.L. 270, § 1; P.L. 252-1985, § 15.]

27-1-6-3. Corporate name. -- The name of any company organized under this article shall contain the word "insurance" and the word "company," "corporation" or "incorporated," or shall end with an abbreviation of one of these words, except that the word "company" or the abbreviation "Co." may be used only if that word or abbreviation is not immediately preceded by the word "and," or any substitute therefor.

No company organized under this article shall:

(a) Use as a part of its corporate name the words "United States," "Federal," "government," "official," or any word that would imply that the company was an administrative agency of

the state of Indiana or of the United States, or is subject to supervision of any department other than the department of insurance of the state of Indiana.

(b) Take or assume a corporate name the same as, or confusingly similar to, the name of any other insurance company then existing under the laws of this state or authorized to transact business in this state, unless at the same time (1) such other company shall change its corporate name or withdraw from transacting business in this state, and (2) the written consent of such company, signed and verified under oath by its secretary, shall be filed with the department.

Any company organized under this article may change its corporate name at any time by amending its articles of incorporation in the manner hereinafter

provided. The provisions of this section shall not affect the right of any insurance company which is existing under the laws of this state at the time this article takes effect or of any such company which thereafter reorganizes or reincorporates under this article or of any company authorized to transact business in this state at the time this article takes effect to continue the use of its corporate name. [Acts 1935, ch. 162, § 63, p. 588; 1977, P.L. 281, § 3.]

IC 27-6-6

27-6-6-1. Authorization. -- Individuals, partnerships and corporations of this state, hereby designated "subscribers," are hereby authorized to exchange reciprocal or interinsurance contracts with each other or with individuals, partnerships and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under the fire or casualty classifications as authorized by the insurance laws of this state, except title insurance. [Acts 1919, ch. 102, § 1, p. 503; 1967, ch. 232, § 1.]

27-6-6-2. How contracts executed. -- Such contracts may be executed by an attorney, agent or other representative herein designated "attorney," duly authorized and acting for such

subscribers. The office or offices of such attorney may be maintained at such place or places as may be designated by the subscribers in the power of attorney. [Acts 1919, ch. 102. § 2, p. 503.]

27-6-6-3. Filing of declaration - Contents. -- Such subscribers so contracting among themselves shall, through their attorney, file with the insurance department a declaration verified by the oath of such attorney, or where such attorney is a corporation, by the oath of a chief officer thereof, setting forth the following:

(a) The name or title adopted by such subscribers proposing to exchange such indemnity contracts. Such name or title shall not be so similar to any other name or title previously adopted by a similar organization or by any

insurance corporation or association as in the opinion of the insurance department is likely to result in confusion or deception.

(b) The kind or kinds of insurance to be effected or exchanged.

(c) A copy of the form of policy contract or agreement under or by which such insurance is to be effected or exchanged.

(d) A copy of the form of power of attorney or other authority of such attorney under which such insurance is to be effected or exchanged; Provided, That a copy of any amendment to or substitution of such form shall be filed with the insurance department prior to its use.

(e) The location of the office or offices from which such contracts or agreements are to be issued.

(f) That applications have been made for indemnity upon at least one hundred (100) separate risks aggregating not less than one and one-half million dollars ($1,500,000) as represented by executed contracts or bona fide applications to become concurrently effective in the case of fire insurance, and in the case of automobile insurance, executed contracts or bona fide applications for indemnity upon two hundred and fifty (250) separate risks aggregating not less than one and one-half million dollars ($1,500,000) or any or all classes of automobile insurance effected by said subscriber through said attorney.

(g) That there is in the possession of such attorney and available for the payment of losses, assets conforming to the requirements of section 6 [27-6-6-6] of this chapter.

(h) A financial statement under oath prescribed for the annual statement.

(i) The instrument authorizing service of process as provided in this chapter. [Acts 1919, ch. 102, § 3, p. 503; 1963, ch. 315, § 1; 1967, ch. 232, § 2; P.L. 252-1985, § 217.]

27-6-6-4. Service of process. -- Concurrently with the filing of the declaration provided for by the terms of section 3 [27-6-6-3] of this chapter, the attorney shall file with the department of insurance, state of Indiana, an instrument in writing, executed by him for said subscribers, conditiond that, upon the issuance of a certificate of authority provided for in section 9 [27-6-6-9] of this chapter, service of process may be had upon the commissioner of insurance in all suits in this state arising out of such policies, contracts,

or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Two (2) copies of said process with complaint attached shall be served and a fee of three dollars [$3.00] paid to the commissioner at the time of said service; Provided, however, That a writ against the commissioner of insurance in such case shall not be returnable until thirty (30) days after service. It shall be the duty of the commissioner of insurance, upon such service, to promptly send one (1) copy of such summons, by registered letter, to said attorney and to file the other copy of summons in his office. [Acts 1919, ch. 102, § 4, p. 503; 1967, ch. 232, § 3; P.L. 252-1985, § 218.]

27-6-6-5. Statement of maximum of

indemnity. There shall be filed with the department of insurance, state of Indiana, by such attorney, whenever the department of insurance shall so require, a statement under oath of such attorney, showing, in the case of fire insurance, the maximum amount of indemnity upon a single risk, and no subscriber shall assume on any single fire insurance risk an amount greater than ten percent [10%] of the net worth of such subscriber. [Acts 1919, ch. 102, § 5, p. 503; 1967, ch. 232, § 4.]

27-6-6-6. Maintenance of cash or securities for reserves. -- There shall at all times be maintained as assets a sum in cash or securities of the kind designated by the laws of the state where the principal office is located for the investment of funds of insurance companies, doing the same kinds of

business, amounting to fifty per cent (50%) of the net annual deposits, collected, and credited to the accounts of subscribers on policies having one (1) year or less to run and pro rata on those for longer periods; in addition to which there shall be maintained in cash or such securities assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, same to be calculated on the basis of net premiums or deposits as in this section defined and in accordance with the laws of the state relating to similar reserves for companies insuring similar risks. For the purpose of computing said reserves and assets, net deposits shall be construed to mean the payments of subscribers collected or in the course of collection after deducting therefrom the amounts provided in the subscribers'

agreement for expenses except payments or credits to the attorney-in-fact. If at any time the assets so held in cash or such securities shall be less than required above, or be less than three hundred thousand dollars [$300,000], the subscribers or their attorney for them shall make up the deficiency within thirty [30] days after notice from the department of insurance so to do: Provided, however, That as to reciprocal or interinsurance exchanges now licensed and authorized to do business in Indiana, the alternative minimum of cash or securities required to be held shall be one hundred thousand dollars [$100,000]. [Acts 1919, ch. 102, § 6, p. 503; 1963, ch. 315, §2; 1967, ch. 232, § 5.]

27-6-6-7. Reports - Examination. -- Such attorney shall, within the time limited for filing the annual statement

by insurance companies transacting the same kind of business, make a report under oath to the insurance department for each calendar year showing the financial condition of affairs at the office where such contracts are issued and shall furnish such additional information and reports as may be required. The business affairs, records, and assets of any such organization shall be subject to examination by the insurance department at any reasonable time, and such examination shall be at the expense of the organization examined. Where the principal office of the attorney is located in another state, the insurance department may in lieu of the examination provided for in this section, accept a certified copy of the report of examination made by the insurance department of the state where

the principal office is located. [Acts 1919, ch. 102, § 7, p. 503; 1963, ch. 315, § 3; 1967, ch. 232, § 6.]

27-6-6-8. Right to exchange contracts. Any corporation now or hereafter organized under the laws of this state, shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as much granted as the rights and powers expressly conferred. [Acts 1919, ch. 102, § 8, p. 503.]

27-6-6-9. Certificate of authority - License. -- Upon compliance with the requirements of this chapter, the

insurance department shall issue a certificate of authority or a license to the attorney authorizing him to make such contracts of insurance and shall contain the name of the attorney, the location of the principal office, and the name or the designation under which such contracts of insurance are issued. Such license shall be renewed annually, upon a showing that the standard of solvency required in this section has been maintained and all fees and taxes required have been paid; Provided, no certificate of authority shall be issued under this section unless and until the subscribers and the attorney shall have complied with the same character and fitness qualifications, plan of operation, and standards for officers and directors as is required of stock and mutual insurance companies under this title. [Acts 1919,

ch. 102, § 9, p. 503; 1967, ch. 232, § 7; P.L. 252-1985, § 219].

27-6-6-10. Failure to comply with chapter by attorney - Penalty. -- An attorney who exchanges a contract of insurance of the kind and character specified in this chapter, or solicits or negotiates any application for such a contract, without complying with this chapter, commits a class C infraction. For the purpose of organization and upon issuance of permit by the insurance department, powers of attorney and applications for such contracts may be solicited without compliance with this chapter, but a person may not make or issue any such contracts until this chapter is complied with. [Acts 1919, ch. 102, § 10, p. 503; 1967, ch. 232, § 8; 1978, P.L. 2, § 2722.]

27-6-6-11. Additional penalty -

Revocation of licens. -- In addition to the penalties in section 10 [27-6-6-10] of this chapter and where not otherwise provided, the penalty for failure or refusal to comply with any or all of the terms and provisions of this chapter, upon the part of the attorney, shall be the refusal, suspension, or revocation of certificate of authority or license by the insurance department, after due notice and opportunity for hearing has been given such attorney, so that he may appear and show cause why such action should not be taken. [Acts 1919, ch. 102, § 11, p. 503; 1967, ch. 232, § 9; P.L. 252-1985, § 220.]

27-6-6-12. Taxes, licenses and fees. -- In lieu of all other taxes, licenses or fees, state or local, such attorney shall pay annually on account of the transaction of such business in this

state the same taxes, licenses and fees as are required to be paid by mutual insurance companies with principal office similarly located and transacting the same kind of business. In the application of the retaliatory law, the taxes and fees exacted by another state from an exchange with principal office in Indiana shall apply. [Acts 1919, ch. 102, § 12, p. 503.]

27-6-6-13. Policy provision for reciprocal or interinsurance. -- The attorney may insert in any form of policy prescribed by the laws of this state any provisions or conditions required by the plan of reciprocal or interinsurance, Provided That same shall not be inconsistent with or in conflict with the law of this state. Such policy in lieu of conforming to the language and form prescribed by such law, shall be held to

conform thereto in substance if such policy includes a provision or indorsement reciting that the policy shall be construed as if in the language and form prescribed by such law. Any such indorsement shall first be filed with the insurance department. [Acts 1919, ch. 102, § 13, p. 503; 1967, ch. 232, § 10.]

27-6-6-14. Exchange of indemnity contracts. -- Except as herein provided, no law of this state relating to insurance shall apply to the exchange of indemnity contracts described herein, unless they are specifically mentioned therein. [Acts 1919, ch. 102, § 14, p. 503.]

27-6-6-15. Authorized to assume liability for expenses in establishment of exchange. -- The attorney for the subscribers at a reciprocal or

interinsurance exchange organized under this law may on behalf of the subscribers borrow or assume a loan or advance for the repayment of a sum of money sufficient to defray the reasonable expenses in the establishment of such an exchange or to enable the attorney for the subscribers at the exchange to comply with any requirement of the law or as a guarantee fund upon agreement. The borrowing or assumption shall first be submitted to and approved by the department, and shall be repaid only out of the surplus, earnings or profits at the exchange with the approval of the department. The department shall withhold its approval of any repayment whenever in its judgment the financial condition of the attorney for the subscribers at such exchange shall warrant, but shall not withhold its

approval if after the repayment the attorney-in-fact for subscribers at the exchange shall have and be in possession of a surplus equal to ten percent [10%] or more of the gross annual premium of the subscribers. Any such loan or advance shall not form a part of the legal liabilities of the attorney for the subscribers at the exchange but until repaid, all statements published by the attorney for the subscribers or filed with the department, shall show the amount thereof then remaining unpaid. However, this section shall not be construed as an extension of the liability of any subscriber beyond that expressly provided for in the subscribers' agreement or power of attorney. The per annum interest rate on any loan or advance shall not exceed three-quarters of one percent [.75%]

above the prevailing prime bank rate charged by national banks and banks chartered by the state of Indiana with their principal offices in Indiana, or ten percent [10%], whichever is less. The department shall establish the prevailing prime bank rate for each calendar quarter equal to this rate for the first working day of the subsequent calendar quarter. The prime bank rate for any bank on a given day is the rate of interest it charges on unsecured loans made that day to its most credit-worthy customers. In establishing the prevailing prime bank rate the department may use the prime bank rate charged by the fifteen [15] largest banks with their principal offices in Indiana, or such other number as the department deems adequate. The total amount of interest shall be calculated on a three hundred

sixty [360] day basis. [Acts 1919, ch. 102, § 14a, as added by Acts 1967, ch. 232, § 11; 1977, P.L. 287, § 1.]

IC 27-9

27-9-1-1. Applicability of article. -- Proceedings under this article apply to:

(1) All insurers who are doing, or who have done, insurance business in Indiana, and against whom claims arising from that business may exist.

(2) All insurers who purport to do business in Indiana.

(3) All insurers who have insureds resident in Indiana.

(4) All other persons organized or in the process of organizing with the intent to do an insurance business in Indiana.

(5) All nonprofit service plans, fraternal benefit societies, and beneficial societies.

(6) All title insurance companies.

(7) All prepaid health care delivery plans under IC 27-8-7. [IC 27-9-1-1, as added by Acts 1979, P.L. 255, § 1; P.L. 274-1987, § 16.]

27-9-1-2. Definitions. -- As used in IC 27-9:

. . .

(d) "Delinquency proceeding" means:

(1) Any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving that insurer; and

(2) Any summary proceeding under IC 27-9-2-1 or IC 27-9-2-2.

(e) "Doing business" includes the following acts, whether effected by mail or otherwise:

(1) The issuance or delivery of contracts of insurance to persons resident in Indiana.

(2) The solicitation of applications for contracts or other negotiations preliminary to the execution of contracts.

(3) The collection of premiums, membership fees, assessments, or other consideration for contracts.

(4) The transaction of matters subsequent to execution of contracts and arising out of them.

(5) Operating under a license or certificate of authority, as an insurer, issued by the insurance department. . . .

(m) "Insurer" means any person who:

(1) Has done, purports to do, is doing, or is licensed to do insurance business; and

(2) Is subject to the authority of any insurance commissioner as to liquidation, rehabilitation,

reorganization, supervision, or conservation.

For purposes of IC 27-9, other persons included under section 1 [27-9-1-1] of this chapter shall be considered to be insurers. . . .[IC 27-9-1-2, as added by Acts 1979, P.L. 255, § 1.]

27-9-1-3. Judicial proceedings - Restrictions - Jurisdiction - Stay of Indiana proceedings. -- (a) A delinquency proceeding under this chapter may only be commenced by the commissioner. A court may not entertain, hear, or determine a proceeding commenced by any other person.

(b) A court may not entertain, hear, or determine any complaint requesting:

(1) The dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer; or

(2) An injunction, restraining

order, or other relief preliminary to, incidental to, or relating to those proceedings other than in accordance with this article.

(c) In addition to other grounds for jurisdiction provided by the law, an Indiana court having jurisdiction of the subject matter has jurisdiction over a person served under the Indiana rules of court or other applicable law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in Indiana if the person served is:

(1) Obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker in any action on or incident to the obligation;

(2) A reinsurer who:

(A) Has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced; or

(B) Is an agent or broker of, or for, the reinsurer in any action on or incident to the reinsurance contract; or

(3) Or (sic) has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced in any action resulting from such a relationship with the insurer.

(d) If it appears to a receiver appointed in a proceeding under this article that there has been criminal or tortious conduct, breach of any contractual or fiduciary obligation, or other unlawful conduct detrimental to the insurer by any director, officer, manager, agent, broker, employee, or other person or entity, the receiver may pursue all appropriate legal remedies on behalf of the insurer.

(e) If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside Indiana, the court may enter an order to stay further proceedings on the action in Indiana.

(f) All action authorized by this section must be brought in the Marion County circuit court. [IC 27-9-1-3, as added by Acts 1979, P.L. 255, § 1; P.L.

167-1986, § 1.]

27-9-2-1. Orders of commissioner - Duty to comply - Supervision - Civil liabilities - Judicial enforcement. -- (a) Whenever the commissioner has reasonable cause to believe, and determines, after a hearing held under IC 4-21.5-3, that any domestic insurer has committed or engaged in, or is about to commit or engage in, any act, practice, or transaction that would subject it to a delinquency proceeding under IC 27-9-3-1 or IC 27-9-3-6, the commissioner may make and serve upon the insurer and any other persons involved, any orders reasonably necessary to correct, eliminate, or remedy that conduct, condition, or ground.

(b) If the commissioner has reasonable cause to believe that any domestic insurer is in such condition as to render the continuance of its business

hazardous to the public or to holders of its policies or certificates of insurance, or if that domestic insurer gives its consent, the commissioner shall upon his determination issue an order:

(1) Notifying the insurer of his determination; and

(2) Providing the insurer with a written list of the commissioner's requirements to correct its business practices.

(c) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (a) or (b), the commissioner shall notify the insurer that it is under the supervision of the commissioner. . . .

(h) The commissioner may apply for and the Marion County circuit court may grant, under IC 4-21.5-6, restraining orders as are necessary and proper to

enforce a supervision order. . . . [IC 27-9-2-1, as added by Acts 1979, P.L. 255, § 1; P.L. 7-1987, § 155.]

27-9-2-2. Seizure order - Petition - Duration - Effect on insurer's contracts - Hearing and review - Notice to affected persons. -- (a) The commissioner may file in the Marion County circuit court a petition alleging, with respect to a domestic insurer:

(1) That there exist grounds that justify a court order for a formal delinquency proceeding against the insurer under IC 27-9;

(2) That the interests of policyholders, creditors, or the public will be endangered by delay; and

(3) Other matters the commissioner considers necessary. . . . [IC 27-9-2-2, as

added by Acts 1979, P.L. 255, § 1.]

27-9-3-1. Petition for rehabilitation - Grounds. The commissioner may apply by petition to the Marion County circuit court for an order authorizing him to rehabilitate a domestic insurer or an alien insurer domiciled in Indiana on any one (1) of the following grounds:

> (1) The insurer is in a condition that the further transaction of business would be hazardous, financially, to its policyholders, creditors, or the public. . . .

[IC 27-9-3-1, as added by Acts 1979, P.L. 255, § 1; P.L. 7-1987, § 156.]

27-9-3-2. Order to rehabilitate - Title in rehabilitator - Accountings - Effect on insurer's contracts. (a) An order to rehabilitate the business of a

domestic insurer, or an alien insurer domiciled in Indiana, must:

(1) Appoint the commissioner and his successors in office as the rehabilitator.

(2) Direct the rehabilitator to take possession of the assets of the insurer as soon as possible, and to administer them under the general supervision of the Marion County circuit court.

(b) The filing or recording of the order with the clerk of the Marion County circuit court or recorder of deeds of the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds

would have imparted. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator. . . . [IC 27-9-3-2, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-3. Personnel to assist rehabilitator - Expenses - Authority of rehabilitator - Plan - Approval. (a) The commissioner, as rehabilitator, may appoint one (1) or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section. Also, the commissioner may employ such counsel, clerks, and assistants as he considers necessary.

(b) With the approval of the court, the compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the

insurer and of conducting the proceedings shall be:

(1) Fixed by the commissioner; and

(2) Paid out of the funds or assets of the insurer.

(c) The persons appointed under this section shall serve at the pleasure of the commissioner.

(d) In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the insurance department. Any amounts so advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance department out of the first available money of the insurer.

(e) The rehabilitator may take such action as he considers necessary or appropriate to reform and revitalize the insurer. The commissioner:

(1) Has all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator;

(2) May direct, manage, hire, and discharge employees subject to any contract rights they may have; and

(3) May deal with the property and business of the insurer.

(f) The rehabilitator may prosecute any action that exists in behalf of the creditors, members, policyholders, or shareholders of the insurer against any director or officer of the insurer or any other person or entity.

(g) If the rehabilitator determines

that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, he shall prepare a plan to effect those changes.

(h) Upon application of the rehabilitator for approval of the plan, and after such notice and hearings as the Marion County circuit court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan.

(i) In the case of the life insurer, the plan proposed may include the imposition of liens upon the policies of company, if all rights of shareholders

are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary. [IC 27-9-3-3, as added by Acts 1979, P.L. 255, § 1; P.L. 167-1986, § 3.]

27-9-3-7. Order to liquidate - Title in liquidator - Rights fixed - Judicial declaration of insolvency - Accountings. (a) An order to liquidate the business of a domestic insurer must:

(1) Appoint the commissioner and his successors in office liquidator.

(2) Direct the liquidator as soon as possible to take possession of the assets of the insurer and to administer them under the general supervision of the Marion County

circuit court.

(b) The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the circuit court and the recorder of deeds of the county in which its principal office or place [of] business is located, or in the case of real estate with the recorder of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(c) Upon issuance of the order, the rights and liabilities of any insurer and

of its creditors, policyholders, shareholders, members and all other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided in sections 8 and 35 [27-9-3-8, 27-9-3-35] of this chapter.

(d) An order to liquidate the business of an alien insurer domiciled in Indiana must be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included in the liquidation.

(e) At the time of petitioning for an order of liquidation, or at any time after petitioning for an order of liquidation, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the

Marion County circuit court for a judicial declaration of that insolvency. After providing for a notice and hearing as the Marion County circuit court considers proper, the court may make the declaration.

(f) An order issued under this section shall require accounting by the liquidator to the Marion County circuit court. Accountings shall be at intervals as the court specifies in its order. [IC 27-9-3-7, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-9. Dissolution by order or operation of law - Powers of liquidator. - (a) The commissioner may petition for an order dissolving the corporate existence of a domestic insurer, or the United States branch of an alien insurer domiciled in Indiana, at the time he applies for a liquidation order. The

Marion County circuit court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, the dissolution shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

(b) The liquidator may do all acts necessary or appropriate for the accomplishment of the liquidation, including the following:

(1) Appoint a special deputy to act for him under this article, and determine a reasonable compensation for that special duty.

(2) Employ employees and

agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel as he considers necessary to assist in the liquidation.

(3) Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court.

(4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer.

(5) Hold hearings, subpoena witnesses to compel their attendance,

administer oaths, examine any person under oath, and compel any person to subscribe to his testimony after it has been correctly reduced to writing, and in connection with hearings and the examination of witnesses require the production of any books, papers, records, or other documents which he deems relevant to the inquiry.

(6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:

(A) Institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against those debts;

(B) Do other acts necessary or expedient to

collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as he considers best; and

(C) Pursue any creditor's remedies available to enforce his claims.

(7) Conduct public and private sales of the property of the insurer.

(8) Use assets of the estate of an insurer under the liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 40 [IC 27-9-3-40] of this chapter.

(9) Acquire, hypothecate,

encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable.

(10) Borrow money on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

(11) Enter into contracts that are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.

(12) Continue to prosecute and to institute in the name of the insurer, or in his own name, all suits and other legal proceedings, in

Indiana or elsewhere, and abandon the prosecution of claims he considers unprofitable to pursue further.

(13) Prosecute any action that may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any director or officer of the insurer, or any other person.

(14) Remove all records and property of the insurer to the offices of the commissioner or to some other place as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one (1) or more banks in Indiana sums required for meeting current administration expenses and dividend distributions.

(16) Invest all sums not currently needed, unless the court

orders otherwise.

(17) File any necessary documents for record in the office of any recorder of deeds or record office in Indiana or elsewhere where property of the insurer is located.

(18) Assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury.

(19) Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included in sections 14 through 16 [IC 27-9-3-14 -- 27-9-3-16] of this chapter.

(20) Intervene in any proceeding

wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.

(22) Exercise all powers conferred upon receivers by the laws of Indiana not inconsistent with this article. [IC 27-9-3-9, as added by Acts 1979, P.L. 255, § 1; P.L. 167-1986, § 4.]

27-9-3-10. Notice of liquidation - Notice to file claims - Distribution of assets conclusive. - (a) Unless the Marion County circuit court otherwise

directs, the liquidator shall give notice of the liquidation order as soon as possible by:

(1) First class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business;

(2) First class mail to any guaranty association or foreign guaranty association that is or may become obligated as a result of the liquidation;

(3) First class mail to all insurance agents of the insurer;

(4) First class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last known address as indicated by the records of the insurer;

(5) First class mail to the secretary of state's office; and

(6) Publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in all other locations the liquidator considers appropriate.

(b) Notice to potential claimants under subsection (a) must require claimants to file with the liquidator their claims, together with proper proof of those claims under section 34 [27-9-3-34] of this chapter, before a date the liquidator specifies in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants must keep the liquidator informed of any changes of address.

(c) If notice is given in accordance with this section, the distribution of assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice [IC 27-9-3-10, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-11. Notice to policyholders by agents - Contents - Report of compliance - Penalty - Waiver of obligation. - (a) Every person who receives notice in the form prescribed in section 10 [IC 27-9-3-10] of this chapter that an insurer whom he represents as an agent is the subject of a liquidation order must, within fifteen (15) days of that notice, give notice of the liquidation order to each policyholder as provided by subsection (b).

(b) The notice must be sent by first class mail to the last address contained

in the agent's records to each policyholder or other person named in any policy issued through that agent by the insurer, if he has a record of the address of the policyholder or other person.

(c) A policy shall be treated as though it were issued through an agent if the agent has a property interest in the expiration of the policy, or if the agent has had in his possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another.

(d) The written notice must include:

(1) The name and address of the insurer;

(2) The name and address of the agent; and

(3) Identification of the policy impaired and the nature of the impairment, including termination of coverage as described in section 8 [IC 27-9-3-8] of this chapter.

(e) Notice by a general agent satisfies the notice requirement for any agents under contract to him. Each agent obligated to give notice under this section shall file a report of compliance with the liquidator.

(f) After a hearing under IC 4-21.5-3, an agent failing to give notice or file a report of compliance as required by subsection (e) may be subject to payment of a penalty of not more than one thousand dollars ($1,000) and may have his license suspended.

(g) The liquidator may waive the duties imposed by this section if he determines that other notice to the

policyholders of the insurer under liquidation is adequate. [IC 27-9-3-11, as added by Acts 1979, P.L. 255, § 1; P.L. 7-1987, § 157.]

27-9-3-12. Suits barred by appointment of liquidator - Full faith and credit to actions authorized by similar foreign provisions - Intervention in foreign action - Limitation periods - Standing of guaranty associations. - (a) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in Indiana, an action at law or equity may not be brought against the insurer or liquidator, whether in Indiana or elsewhere, nor shall any existing actions be maintained or further presented after issuance of an order.

(b) The courts of Indiana shall give full faith and credit to injunctions

against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when those injunctions are included in an order to liquidate an insurer issued under similar provisions in other states.

(c) Whenever in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside Indiana, the liquidator may intervene in the action. The liquidator may defend any action in which he intervenes under this section at the expense of the estate of the insurer.

(d) Within two (2) years after an order for liquidation (or a time in addition to two [2] years as aplicable law may permit) the liquidator may institute an action or proceeding on behalf of the estate of the insurer upon

any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered.

(e) Where, by an agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case the period had not expired at the date of the filing of the petition[,] The liquidator may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the insurer,

within a period of one hundred eighty [180] days after the entry of an order for liquidation, or within such further period as is shown to the satisfaction of the Marion County circuit court not to be unfairly prejudicial to the other party.

(f) A statute of limitations or defense of laches shall not run with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may not be commenced for at least sixty [60] days after the petition is denied.

(g) Any guaranty association or foreign guaranty association has standing to appear in any court proceeding concerning the liquidation of an insurer if that association is or may become

liable to act as a result of the liquidation. [IC 27-9-3-12, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-14. Fraudulent transfers and obligations - Avoidance. - (a) Every transfer made, or suffered, and every obligation incurred by an insurer within one [1] year before the filing of a successful petition for rehabilitation or liquidation under IC 27-9 is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors.

(b) A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under IC 27-9, which is fraudulent under this section, may be avoided by the receiver, except:

(1) As to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value; and

(2) That any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment.

The court may, on due notice, order any transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(c) A transfer of property, other than real property, is made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or

equitable proceedings on a simple contract could become superior to the rights of the transferee under section 18 [27-9-3-18] of this chapter.

(d) A transfer of real property is made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(e) A transfer that creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(f) Any transfer not perfected before the filing of a petition for liquidation shall be treated as if it were made immediately before the filing of the successful petition.

(g) The provisions of subsections (b) through (f) apply whether or not

there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

(h) Any transaction of the insurer with a reinsurer is fraudulent and may be avoided by the receiver under section 13 [27-9-3-13] of this chapter if:

(1) The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred before the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and

(2) Any part of the transaction took place within one [1] year before the date of filing of the petition through which the receivership was

commenced. [IC 27-9-3-14, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-15. Transfers made after filing of petitions -- Negotiability not impaired. - (a) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid for that real property, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation

or liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state with jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of a proceeding, unless the copy is recorded in the county before the consummation of the judicial sale.

(b) After a petition for rehabilitation or liquidation has been filed and before either the [receiver] takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(1) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid

against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid for that real property, for which amount the transferee shall have a lien on the property so transferred;

(2) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part of the property, to the insurer or upon his order, with the same effect as if the petition were not pending;

(3) A person having actual knowledge of the pending rehabilitation or liquidation shall be considered not to act in good

faith; and

(4) A person asserting the validity of a transfer under this section has the burden of proof.

Except as elsewhere provided in this section, a transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

(c) Nothing in IC 27-9 shall be considered to impair the negotiability of currency or negotiable instruments. [IC 27-9-3-15, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-16. Preferences -- Avoidance. - (a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the

insurer within one [1] year before the filing of a successful petition for liquidation under IC 27-9, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then that transfer shall be considered a preference if made or suffered within one [1] year before the filing of the successful petition for rehabilitation, or within two [2] years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) A preference may be avoided by the liquidator if:

(1) The insurer was insolvent at the time of the transfer;

(2) The transfer was made within four [4] months before the filing of the petition;

(3) The creditor receiving it or to be benefited by it or his agent acting with reference to it had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(4) The creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he held such a position, or any shareholder holding directly or indirectly more than five per centum [5%] of any class of any equity security issued by the insurer, or any other person, firm,

corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length.

(c) Where the preference is voidable, the liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property, except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien upon the property to the extent of the consideration actually given by him. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator. [IC 27-9-3-16, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-17. Time transfer made or suffered. - (a) A transfer of property other than real property shall be considered to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(b) A transfer of real property shall be considered to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(c) A transfer that creates an equitable lien shall not be considered to be perfected if there are available means by which a legal lien could be created.

(d) A transfer not perfected before the filing of a petition for liquidation

shall be considered to be made immediately before the filing of the successful petition.

(e) This section applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers. [IC 27-9-3-17, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-18. Meaning of terms relative to time determination. - (a) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of those proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens that under applicable law are given

a special priority over other liens that are prior in time.

(b) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of section 17 [27-9-3-17] of this chapter, if those consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. A lien could not, however, become superior and a purchase could not create superior rights for the purpose of section 17 of this chapter through any acts after obtaining a lien or after a purchase that requires the agreement or

concurrence of any third party or which requires any further judicial action or ruling. [IC 27-9-3-18, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-19. Transfers for new and contemporaneous consideration. -- A transfer of property for or on account of a new and contemporaneous consideration that is considered under section 17 [27-9-3-17] of this chapter to be made or suffered after the transfer because of delay in perfecting it does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one [21] days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan or a transfer that becomes

security for a future loan, has the same effect as a transfer for or on account of a new and contemporaneous consideration [IC 27-9-3-19, as added by Acts 1979, P.L. 255 § 1.]

27-9-3-20. Indemnifying transfers or liens. -- If any lien that is voidable under section 16(b) [27-9-3-16(b)] of this chapter has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under IC 27-9 that results in a liquidation order, the indemnifying transfer or lien shall also be considered voidable [IC 27-9-3-20, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-21. Discharge of voidable liens or preservation for benefit of

estate. -- The property affected by any lien considered voidable under sections 16 and 20 [27-9-3-16, 27-9-3-20] of this chapter shall be discharged from that lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed as may be proper or adequate to evidence the title of the liquidator. [IC 27-9-3-21, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-22. Summary jurisdiction - Notice - Disposition of indemnifying property or lien. -- The Marion County circuit court has summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties

under this chapter. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator, within reasonable times as the court shall fix. [IC 27-9-3-22, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-23. Discharge of surety under releasing bond. -- The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator, or where the property is retained under section 22 [27-9-3-22] of this chapter to the extent of the amount paid to the liquidator. [IC 27-9-3-23, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-24. Set-off against preference. -- If a creditor has been preferred, and afterward in good faith gives the insurer further credit without security of any kind for property that becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be

set off against the preference that would otherwise be recoverable from him. [IC 27-9-3-24, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-25. Payments or transfers to attorneys. -- If an insurer shall, directly or indirectly:

(1) Within four [4] months before the filing of a successful petition for liquidation under IC 27-9; or

(2) At any time in contemplation of a proceeding to liquidate it;

pay money or transfer property to an attorney for services, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the

court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the insurer or an affiliate of the insurer payment of any money or the transfer of any property to the attorney for services is governed by section 16(b)(4) [27-9-3-16(b)(4)] of this chapter. [IC 27-9-3-25, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-26. Personal liability for preferences. - (a) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the

preference. If the transfer was made within four [4] months before the date of filing a successful petition for liquidation it may be presumed that the person knew of the pending insolvency.

(b) Every person receiving any property from the insurer (or the benefit of any property) as a preference voidable under section 16(a) [27-9-3-16(a)] of this chapter is personally liable for that property and is bound to account to the liquidator.

(c) Nothing in this [section] shall prejudice any other claim by the liquidator against any person. [IC 27-9-3-26, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-27. Conditions for allowance of claims of creditor receiving voidable transfer - Excused late filing. - (a) Claims of a creditor who has received or

acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under IC 27-9, shall not be allowed unless he surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty [30] days from the date of entering of the final judgment, except that the Marion County circuit court may allow further time if there is an appeal or other continuation of the proceeding.

(b) A claim allowable under subsection (a) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or

encumbrance, may be filed as an excused late filing under section 33 [27-9-3-33] of this chapter if filed within thirty [30] days from the date of the avoidance (or within the further time allowed by the court under subsection (a)). [IC 27-9-3-27, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-34. Proof of claim - Contents - Form - Additional information and proceedings - Evidence. - (a) Proof of a claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(1) The paticulars of the claim including the consideration given for it.

(2) The identity and amount of the security on the claim.

(3) The payments made on the debt, if any.

(4) That the sum claimed is justly owing and that there is no setoff, counterlcaim, or defense to the claim.

(5) Any right of priority of payment or other specific right asserted by the claimants.

(6) A copy of written instrument that is the foundation of the claim.

(7) The name and address of the claimant and the attorney who represents him, if any.

(b) A claim need not be considered or allowed if it does not contain all the information in subsection (a) that is applicable. The liquidator may require that a prescribed form be used, and may require that other information and documents be included.

(c) At any time, the liquidator may:

(1) Request the claimant to present information or evidence supplementary to that required by subsection (a);

(2) Take testimony under oath;

(3) Require production of affidavits or depositions; or

(4) Obtain additional information or evidence necessary.

(d) The following do not need to be considered as evidence of liability or the measure of damages:

(1) A judgment or order against an insured or the insurer entered after the date of filing a successful petition for liquidation.

(2) A judgment or order against an insured or the insurer entered at anytime by default or by collusion.

(3) A judgment or order against an insured or the insurer entered not

more than four [4] months before the filing of the petition.

(e) All claims of a guaranty association or foreign guaranty association must be in a form and contain substantiation as may be agreed to by the association and liquidator. [IC 27-9-3-34, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-35. Claims contingent or not yet due - Employee claims. - (a) The claim of a third party that is contingent only on his first obtaining a judgment against the insured must be considered and allowed as if there were no contingency.

(b) If a claim is filed in accordance with section 33 [27-9-3-33] of this chapter, it may be allowed even if contingent. A contingent claim may be allowed and may participate in all

distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(c) Claims that are due except for the passage of time must be treated as absolute claims are treated, except that the claims may be discounted at the legal rate of interest.

(d) Claims made under employment contracts by directors or principal officers (or persons performing similar functions or having similar powers) are limited to payment for services provided before the issuance of any order of rehabilitation or liquidation under section 2 or 7 [27-9-3-2, 27-9-3-7] of this chapter. [IC 27-9-3-35, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-36. Claims of insured or third party asserting cause of action

against insured. - (a) Whenever a third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.

(b) Whether or not the third party files a claim, the insured may file a claim on his own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation, or within sixty [60] days after mailing of the notice required by section 10 [25-9-3-10] of this chapter, whichever is later, the insured is an unexcused late filer.

(c) The liquidator shall make his recommendations to the Marion County circuit court under section 40 [25-9-3-40] of this chapter, for the allowance of an insured's claim under

subsection (b), after consideration of:

(1) The probable outcome of any pending action against the insured on which the claim is based;

(2) The probable damages recoverable in the action; and

(3) The probable costs and expenses of defense.

(d) After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend his recommendations to the Marion County circuit court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial

determination. The Marion County circuit court may amend its allowance as it thinks appropriate.

(e) As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of:

(1) The amount actually recovered from the insured by action or paid by agreement, plus the reasonable costs and expenses of defense; or

(2) The amount allowed on the claims by the court.

(f) After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this

subsection is not a ground for unreasonable delay of final distribution and discharge of the liquidator.

(g) If several claims founded upon one [1] policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. Claims by the insured shall be evaluated as required in subsections (c) through (f). If any insured's claim is subsequently reduced under subsection (c) through (f) the amount freed shall be apportioned ratably among the claims that have been reduced under this subsection.

(h) A claim may not be presented

under this section if it is or may be covered by any guaranty association or foreign guaranty association. [IC 27-9-3-26, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-37. Notice of denial of claim - Filing of objections - Notice and hearing. - (a) When a claim is denied in whole or in part by the liquidator, written notice of the determination must be given to the claimant or his attorney by first class mail at the address shown in the proof of claim. Within sixty [60] days from the mailing of the notice, the claimant may file his objections with the liquidator. If no filing is made, the claimant may not further object to the determination.

(b) Whenever objections are filed with the liquidator and the liquidator does not alter his denial of the claim as

a result of the objections, the liquidator shall ask the Marion County circuit court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or his attorney and to any other persons directly affected, not less than ten [10] nor more [than] thirty [30] days before the date of the hearing. The matter may be heard by the court or by a court appointed referee who shall submit findings of fact along with his recommendation. [IC 27-9-3-37, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-38. Rights of person securing claim against insurer. -- Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name,

and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him in trust for the other person. As used in this section, the term "other person" is not intended to apply to a guaranty association or foreign guaranty association. [IC 27-9-3-38, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-39. Value of security held by secured creditor - Treatment of deficiency. - (a) The value of any security held by a secured creditor shall be determined in one [1] of the following ways, as the Marion County circuit court may direct:

(1) By converting the security into money according to the terms of the agreement under which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

(b) The valuation determination shall be under the supervision and control of the Marion County circuit court with due regard for the recommendation of the liquidator. The amount determined shall be credited upon

the secured claim, and any deficiency shall be treated as an unsecured claim. If the claimant surrenders his security to the liquidator, the entire claim shall be allowed as if unsecured. [IC 27-9-3-39, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-40. Order of distribution of claims. -- The priority of distribution of claims from the insurer's estate must be in accordance with the order in which each class of claims is set forth in this section. Evey claim in each class must be paid in full (or adequate funds retained for payment) before the members of the next class receive any payment. Subclasses may not be established within any class. The order of distribution of claims shall be:

(1) Class 1. The costs and expenses of administration, including:

(A) The actual and necessary costs of preserving or recovering the assets of the insurer.

(B) Compensation for all services rendered in the liquidation.

(C) Any necessary filing fees.

(D) The fees and mileage payable to witnesses.

(E) Reasonable attorney's fees.

(F) The reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(2) Class 2. Debts due to employees for services performed to the extent that they do not exceed one thousand dollars ($1,000) and

represent payment for services performed within one [1] year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. This priority is in place of any other similar priority that may be authorized by law as to wages or compensation of employees.

(3) Class 3. All claims under policies for losses incurred, including third party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds,

annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in the class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. Payment by an employer to his employee may not be treated as gratuity.

(4) Class 4. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.

(5) Class 5. Claims of the federal government or any state or

local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of these claims shall be postponed to the class of claims under subdivision (8).

(6) Class 6. Claims filed late or any other claims other than claims under subdivisions (7) and (8).

(7) Class 7. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance

companies shall be limited in accordance with law.

(8) Class 8. The claims of shareholders or other owners. [IC 27-9-3-40, as added by Acts 1979, P.L. 255, § 1.]

27-9-3-41. Review and negotiation of claims by liquidator - Report to court - Approval, disapproval or modification. - (a) The liquidator shall review all claims duly filed in the liquidation and shall make further investigation as he considers necessary. He may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the Marion County circuit court except where the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved

disputes shall be determined under section 37 [27-9-3-37] of this chapter. As soon as practicable, the liquidator shall present to the Marion County circuit court a report of the claims against the insurer with his recommendations. The report must include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.

(b) The Marion County curcuit court may approve, disapprove, or modify the report on claims by the liquidator. Reports that are not modified by the court within a period of sixty [60] days

following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court under [to] section 37 of this chapter. A claim under a policy of insurance may not be allowed for an amount in excess of the applicable policy limits. [IC 27-9-3-41, as added by Acts 1979, P.L. 255, § 1.]

A-123

IN THE

COURT OF APPEALS OF INDIANA

SECOND DISTRICT

No. 49A02-8903-CV-105

HARRY E. EAKIN, as the Insurance Commissioner of the Department of Insurance of the State of Indiana,

Appellant (Petitioner Below),

vs.

AMERICAN UNDERWRITERS GROUP, INC.,

Appellee (Respondent Below),

Appeal from the
Marion Circuit Court
The Honorable Judith S. Proffitt,
Special Judge
49C01-8804-MI-1016-A

APPELLEE'S PETITION FOR REHEARING

Appellee-Respondent American Underwriters Group, Inc., ("AUG") hereby petitions this Court to grant a rehearing in this cause and respectfully states

that the Opinion of this Court filed herein on April 10, 1990, is erroneous in each of the following particulars:

* * * *

IV.

* * * *

C.

The Opinion is plainly and fundamentally erroneous in construing IC 27-9 so as to encompass attorneys-in-fact for subscribers of a reciprocal. IC 27-9 as so construed impinges on the federal Bankruptcy Code and is thus rendered unconstitutional and unenforceable under the Supremacy Clause of Article VI of the United States Constitution.

D.

The Opinion is contrary to and contravenes the ruling precedent of the Supreme Court in Ettinger v. Studevant (1942), 219 Ind. 406, 38 N.E.2d 1000,

1003, which held that if the legislative intent of a statute can be ascertained, the courts must give effect to that intention but only to the extent permitted by established principles of statutory construction within constitutional limitations and the prior opinion of the Court of Appeals in Willis v. State (1986), Ind.App., 492 N.E.2d 45, 47, which held that in matters of statutory construction, courts will adopt the interpretation that renders a statute constitutional and fully implements its provisions.

* * * *

WHEREFORE Appellee-Respondent prays that its Petition for Rehearing be granted, that the Opinion and decision of this Court be vacated and that the judgment of the Marion Circuit Court be affirmed.

A-126

IN THE

SUPREME COURT OF INDIANA

No. _____

HARRY E. EAKIN, as the Insurance Commissioner of the Department of Insurance of the State of Indiana,

Appellant (Petitioner Below),

vs.

AMERICAN UNDERWRITERS GROUP, INC.,

Appellee (Respondent Below).

COURT OF APPEALS
NO. 49A02-8903-CV-105

Appeal from the
Marion Circuit Court
The Honorable Judith S. Proffitt,
Special Judge

APPELLEE'S PETITION
TO TRANSFER

Appellee-Respondent American Underwriters Group, Inc., ("AUG"), by counsel, respectfully petitions this

Court for transfer of this cause and in support of its petition states:

1. The Court of Appeals (Second District) decided this cause with a written Opinion filed on April 10, 1990. The Opinion is published at 552 N.E.2d 50.

2. The Opinion of the Court of Appeals was against AUG.

3. A petition for rehearing was timely filed with the Court of Appeals on April 30, 1990, and rehearing was denied on June 5, 1990, without opinion.

4. The Opinion and decision of the Court of Appeals are in error in the following particulars:

* * * *

IV.

* * * *

C.

The Opinion is plainly and fundamentally erroneous in construing IC

27-9 so as to encompass attorneys-in-fact for subscribers of a reciprocal. IC 27-9 as so construed impinges on the federal Bankruptcy Code and is thus rendered unconstitutional and unenforceable under the Supremacy Clause of Article VI of the United States Constitution.

D.

The Opinion is contrary to and contravenes the ruling precedent of the Supreme Court in Ettinger v. Studevant (1942), 219 Ind. 406, 38 N.E.2d 1000, 1003, which held that if the legislative intent of a statute can be ascertained, the courts must give effect to that intention but only to the extent permitted by established principles of statutory construction within constitutional limitations and the prior opinion of the Court of Appeals in Willis v. State (1986), Ind.App., 492

N.E.2d 45, 47, which held that in matters of statutory construction, courts will adopt the interpretation that renders a statute constitutional and fully implements its provisions.

* * * *

WHEREFORE Appellee-Respondent American Underwriters Group, Inc., prays that its petition to transfer be granted, that the Opinion and decision of the Court of Appeals be vacated, and that the judgment of the Marion Circuit Court be affirmed.